

REMARKS

These amendments and remarks are being filed in response to the final Office Action dated March 29, 2005. For the following reasons this application should be allowed and the case passed to issue.

No new matter is introduced by these amendments. Support for the amendment to claim 14 is found in claim 17. New claims 23-28 are supported throughout the specification, including page 20, lines 1-15, and claims 14 and 19-21

Claims 14-16 and 18-28 are pending in this application. Claims 14-22 have been rejected. Claim 14 has been amended in this response. Claim 1-13 have been previously canceled. Claim 17 has been canceled in this response. Claims 23-28 are newly added.

Claim Rejections Under 35 U.S.C. § 112

Claims 14-22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because “the locking hinge adjustable between at least two configurations,” as recited in claim 14, and what structure constitutes these limitations is allegedly unclear. As regards claim 17, the Examiner asserted that it is not clear what hinge is being referred to. These rejections are traversed, and reconsideration and withdrawal thereof respectfully requested.

Applicants submit that the claims are clear and definite to one of ordinary skill in this art. However, in order to advance prosecution of this application, claim 14 has been amended in accordance with the Examiner’s recommendation.

The specification and claims clearly disclose examples of structures that constitute the locking hinge being adjustable between at least two configurations. As explained in claim 14, the first configuration completely prevents the lower ladder section from folding relative to the upper ladder. An example of this configuration is illustrated in Figures 11(a), 11(b), 13(a), and

13(b). The second configuration allows the lower ladder section to fold relative to the upper ladder section. An example of this configuration is illustrated in Figures 15(a) and 15(b).

While claim 17 has been canceled, the limitations of claim 17 have been added to claim 14. The specification, at page 8, lines 7-18, and the accompanying figures, disclose upper ladder section 110 hingedly connected to a member 200 associated with the opening.

Applicants submit that claims 14-22 fully comport with the requirements of 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. § 102

Claims 14, 15, and 17-22 were rejected under 35 U.S.C. § 102(b) as being anticipated by Wenger (U.S. Pat. No. 3,143,185). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested. The following is a comparison between the instant invention, as claimed, and the cited prior art.

An aspect of the invention, per claim 1, is a foldable ladder configured for installation in an opening to provide access between one floor or space and another floor or space, comprising an upper ladder section having at least one rail and a lower ladder section having at least one rail. A locking hinge connects the rail of the upper ladder section to the rail of the lower ladder section and is configured to allow the lower ladder section to fold relative to the upper ladder section. A second hinge is connected to the upper ladder section and is configured to fixedly attach to a member associated with the opening. When the upper ladder section and the lower ladder section are fully unfolded the locking hinge is adjustable between at least two configurations. In a first configuration, the locking hinge completely prevents the lower ladder section from folding relative to the upper ladder section. In a second configuration, the locking hinge allows the lower ladder section to fold relative to the upper ladder section.

The Examiner asserted that Wenger discloses a foldable ladder comprising upper and lower ladder sections having at least one rail, and a locking hinge 37 connecting the upper and lower ladder sections.

Wenger, however, does not anticipate the claimed foldable ladder because Wenger does not disclose a second hinge connected to the upper ladder section, the second hinge configured to **fixedly attach** to a member associated with the opening, as required by claim 14.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). There are significant differences between the claimed foldable ladder and the ladder disclosed by Wenger that would preclude the factual determination that Wenger identically describes the claimed foldable ladder within the meaning of 35 U.S.C. § 102. As explained above, Wenger does not disclose a second hinge connected to the upper ladder section, the second hinge configured to fixedly attach to a member associated with the opening, as required by claim 14. Accordingly, the rejections under 35 U.S.C. § 102 are not legally viable and should be withdrawn.

Applicants further submit that Wenger does not suggest the claimed foldable ladder.

Claim Rejections Under 35 U. S. C. § 103

Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Wenger in view of Gould et al. (U.S. Pat. No. 4,823,912). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested.

The Examiner asserted that it would have been obvious to modify the ladder of Wenger to include the bracket of Gould et al. to secure the ladder.

Wenger and Gould et al., whether taken alone or in combination, do not suggest the claimed foldable ladder because Gould et al. do not cure the deficiencies of Wenger. Gould et al. do not suggest the claimed foldable ladder including a second hinge connected to the upper ladder section, the second hinge configured to **fixedly attach** to a member associated with the opening as required by claim 14. Thus, claim 16 is allowable for at least the same reasons as claim 14.

New claims 23-28 are not suggested by the cited prior art. The limitations in claims 23-28 are fully supported by the specification, including page 20, lines 1-15, and the supporting figures. The claimed biasing members are disclosed in the written description and drawings. Examples of the first, second, and third biasing members are spring 901, spring plunger 902, and angled hinge plate portions 490, 491, respectively. Examples of the hinge latch and angled latch portions are depicted as Reference Nos. 460 and 467, respectively.

Applicants submit that the cited prior art does not suggest the claimed foldable ladder with a locking hinge comprising a hinge latch comprising an angle latch portion, the hinge latch being movable between a locked position and an unlocked position, wherein biasing the hinge latch from the locked position to the unlocked position adjusts the locking hinge from the first configuration to the second configuration; a plurality of hinge plates; a first biasing member biasing the hinge latch towards the locked position; a second biasing member, wherein upon the hinge latch being in the unlocked position, the first biasing member being prevented by the second biasing member from biasing the hinge latch towards the locked position; and a third biasing member, wherein upon rotational movement of the hinge plates the angled latch portion

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contacts the third biasing member allowing the first biasing member to bias the hinge latch towards the locked position, as required by claim 23.

The dependent claims are allowable for at least the same reasons as their respective independent claims and further distinguish the claimed invention.

In view of the above amendments and remarks, Applicants submit that this application should be allowed and the case passed to issue. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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